Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	

COMMENTS OF THE RURAL ALLIANCE

Date: December 17, 2007

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SUMMARY

The Rural Alliance appreciates the opportunity to comment in this proceeding. As the Federal Communications Commission ("Commission") indicates in opening this proceeding, it has a statutory responsibility to ensure that switched access tariff rates are just and reasonable under section 201(b) of the Communications Act of 1934, as amended ("the Act"). However, the Rural Alliance has concerns that in order to address situations in which specific carriers may experience significant increases in demand that may cause their rates to violate the just and reasonable provisions of the Act, the Commission may adopt rules that have unintended negative consequences for carriers that have not experienced significant demand increases.

The Rural Alliance asserts that when examining whether switched access tariff rates are just and reasonable, the Commission should address situations in which access demand is declining significantly, which is a more prevalent situation than significant increases in demand. Decreases in access demand may lead to a situation in which access rates are not just and reasonable because a carrier may experience significant under-recovery of its costs.

The Rural Alliance urges the Commission to avoid any rule changes that are likely to have a general detrimental effect on the future enforcement of access tariffs. For this reason, the Commission should proceed with caution in this proceeding and adopt an approach for addressing concerns related to over earnings and access stimulation that is carrier-specific.

Finally, the Rural Alliance submits that Commission's assertions regarding the incremental cost of providing switching and transport do not adequately define the

incremental cost being measured in this proceeding, for example, short run vs. long run. It appears that the incremental costs being addressed in this proceeding are short run costs, therefore, the Rural Alliance asserts that any findings regarding incremental costs of switching and transport should not be generalized to other proceedings, especially to the pricing of unbundled network elements ("UNEs") and transport and termination, as the Commission has required that such elements be priced with a long run view of costs.

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I. INTRODUCTION

The Rural Alliance, on behalf of its sponsoring companies,[1] respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on October 2, 2007 in the above-captioned proceeding. In the NPRM, the Commission initiates a rulemaking proceeding to consider whether the current rules governing the tariffing of traffic-sensitive switched access services by local exchange carriers ("LECs") are ensuring that rates remain just and reasonable.

While the NPRM focuses on whether switched access rates are just and reasonable in the context of significant demand increases, the Rural Alliance asserts that when examining whether switched access tariff rates are just and reasonable, the Commission should also address situations in which access demand is declining significantly. The Rural Alliance urges the Commission to use caution in this proceeding and to adopt an approach for concerns related to over earnings and access stimulation that is carrier-specific. Any changes to the "deemed lawful" provision of the Act that is found in Section 204(a)(3) should be undertaken with great caution, to ensure that any rule

[1] The Rural Alliance is a group sponsored by over 300 rural telephone companies organized to advocate for effective intercarrier compensation reform that will benefit rural consumers and the companies that serve them.

change does not have a general detrimental effect on the future enforcement of access tariffs. Finally, the Rural Alliance submits that the Commission's assertions regarding the incremental cost of providing switching and transport do not adequately define the incremental cost being measured in this proceeding, for example, short run vs. long run. Therefore, any findings regarding switching and transport costs should not be applied in contexts in which long run incremental costs are the appropriate measure of costs, for example, in the pricing of UNEs and transport and termination.

II. THE NPRM INEXPLICABLY IGNORES THE SIGNIFICANT AND GROWING DECREASES IN ACCESS DEMAND WHICH, UNDER THE COMMISSION'S RATIONALE, WOULD CAUSE NON-COMPLIANCE WITH SECTION 201(B).

The NPRM focuses entirely on the increases in switched access demand that occurred for select rural local exchange carriers ("RLECs") and competitive local exchange carriers ("CLECs") which, the Commission tentatively concludes, results in a violation of Section 201(b)'s requirement that carriers' rates be just and reasonable.[2] The Commission contends that because of the increased demand for the few carriers who terminated traffic for chat lines and conference bridge services utilizing these carriers' numbers, the result was rate-of-return levels that were significantly higher than what the carriers were authorized to earn, thus causing the above tentative conclusion.[3]

A. The narrowly focused tariff language recommended in the *NPRM* is a more-than-adequate remedy for the rare instances of significant increases in demand for access traffic.

The Rural Alliance will not address the legality of such arrangements, nor will it dispute the likelihood that the revenues these arrangements allegedly generated could

[2] *See NPRM* at p. 6.

[3] Id. at pp. 6-7.

result in an increase in a company's rate of return.[4] Importantly, though, the Rural Alliance strongly believes that targeted narrow remedies available to the Commission in over-earning situations can be readily available without a need for the extreme over-reaching actions that are proposed and explored in the *NPRM.* In fact, the Commission's own proposed specific solutions for both cost and average schedule carriers would appear to appropriately address these rare situations, without the need for exploration of the multitude of ancillary matters that are raised in the *NPRM.*

For companies filing their own tariffs under section 61.38 and 61.39, the Commission proposes language for those carriers to include in their tariffs.[5] For carriers that file tariffs under section 61.39, the Commission seeks comment on a proposal that would require certifications to be included with the tariff filings.[6] Specifically, a carrier would be required to certify that it was not currently stimulating demand and would not do so during the tariff period. The Rural Alliance believes that this proposal appears reasonable, but adds that other additional actions proposed in the NPRM would not yield any benefits to customers and would unnecessarily throw into disarray a tariffing system that has reliably and efficiently served customers of rate-of-return carriers. The Rural Alliance recalls the old adage that applies here: "If it isn't broke, don't fix it."

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[4] However, the Rural Alliance believes that with the attention that has been placed on these occurrences of so-called "traffic pumping," it is highly unlikely that there will be recurrences in the future.

[5] *See NPRM* at p. 10.

[6] Id. at ¶ 27.

B. The Commission should also address the more prevalent situation of declining access demand.

In addressing the instances of alleged "traffic-pumping" by select carriers, the Commission all but ignores the broader reality faced in the marketplace today – an ongoing significant decline in switched access demand, which is further exacerbated by carriers avoiding their access compensation obligations through a number of means. These problems related to switched access services and rates affect a far greater number of carriers and have a far more detrimental effect on achieving the nation's long-term telecommunications policy goals in rural areas. If the apparent increases in demand in the rare instances documented in the *NPRM* result in rates that are not just and reasonable, the Rural Alliance offers that the same is also true for the reductions in demand that are being experienced by almost all rate-of-return companies. Namely, that because rates are established at the onset of a tariff effective date, the declines in demand during the applicable period will yield an under-recovery of cost and thus also result in a violation of section 201(b)

Documentation of significant demand declines among rate-of-return companies is prevalent across the industry. NECA reported in a May 2007 filing that billable switched access minutes declined almost 6 percent from 2006 and 2007 year to date, and in December 2006 alone demand was down 9 percent from the same month a year ago.[7] NECA's June 15, 2007, access tariff filing further reflects the troubling reality of shrinking demand for access, with local switching minutes of use forecasted to decline by

[7] *See "The Effects of Phantom Traffic and Other 'Access Avoidance' Schemes on Rural Carriers,"* presented by NECA representatives Rick Askoff, Teresa Evert and Joseph A. Douglas to FCC staff members Al Lewis, Deena Shetler, Victoria Goldberg, Jay Atkinson, Chris Barnekov and Lynne Engledow, CC Docket No. 01-92, filed May 2, 2007, ("*NECA presentation")*.

almost 8 percent.[8] Furthermore, carriers that avoid their compensation obligations by intentionally not providing adequate originating-carrier identification – otherwise known as "phantom traffic" – or by claiming they are not obligated to pay compensation as so-called "Internet-based" voice providers, contribute to these demand decline trends.[9] Heretofore the Commission has taken no action on proposals made by the Supporters of the Missoula Plan to remedy the problem. These proposals were contained in a written ex parte filed on November 6, 2006.[10] The Rural Alliance urges the Commission to respond to declines in access demand, which may due in part to "phantom traffic," in the same prompt fashion in which it has issued this NPRM in response to access demand increases, by promptly adopting the proposals made by the Supporters of the Missoula Plan. Adoption of these proposals may lessen the decreases in access demand being experienced by many carriers. Furthermore, adoption of such proposals would serve to create a more level playing field in which all carriers that use another carrier's network pay for the use of that network.

While virtually ignoring the undeniable fact that switched access is in decline, and not asking for any comments about the implications of the effects on long-term viability of rate-of-return companies, the *NPRM* vaguely references there being no need to address demand reductions. Not addressing the flagrant violations of FCC rules by those avoiding access is as serious if not more so than "access pumping" and should be

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[8] *See* NECA Access Service Tariff F.C.C. No. 5, Transmittal No. 1172, June 15, 2007, Volume 3, at p. 5.

[9] *See NECA presentation. See* also Letter from Joe. A. Douglas, Vice President Government Relations, NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 16, 2007).

[10] *See* Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006).

addressed by the FCC. The Commission says it needs not do so "because carriers may make a carrier-initiated tariff filing whenever they want and presumably would do so if their rate of return declined sharply, either because of increased costs, or reduced demand."[11] The Rural Alliance assumes the Commission is referring to mid-course tariff adjustments referenced in *CC Docket No. 86-467*,[12] but this rarely utilized option falls far short of encompassing comprehensive reforms that recognize the inevitable trend of switched access decline and the tactics of many carriers seeking to avoid their switched access obligations.

If the Commission is inclined to enact rule changes in those rare instances where traffic demand has increased, it would be more important to comprehensively address the far more prevalent declines in switched access demand that also results in unjust and unreasonable rates. Contributing to those demand declines are phantom traffic[13] as well as arbitrage that has occurred with carriers attempting to avoid compensation obligations, either by altering the jurisdiction of traffic or by claiming no such obligation exists.[14] Remedies to these situations would optimally include reforms such as those pursued in the Missoula Plan, which has to this point laid dormant at the Commission, or in the

[11] *See NPRM* at footnote 38.

[12]*See In the Matter of Regulation of Small Telephone Companies*, CC Docket No. 86-467, Report and Order (rel. June 29, 1987) at ¶21, which requires "small carriers to file tariffs every other year, or more frequently if they so choose."

[13]According to the *NECA presentation,* estimates indicate phantom traffic accounts for $600 million annually in lost revenues for rural carriers and $2 billion annually for the industry overall.

[14]The most-recent attempt at avoiding compensation obligations for traffic utilizing the Public Switched Telephone Network ("PSTN") is the petition by the so-called "Feature Group IP" requesting that the FCC forbear from requiring these carriers to pay access charges for "voice-embedded Internet communications" carried on the PSTN. *See In the Matter of Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. §160(c from Enforcement of 47 U.S.C. §251(g), Rule 51.701(1)(1) and Rule 69.5(b),*WC Docket No. 07-256 (filed Oct. 23, 2007).

alternative a readily implementable option permitting NECA and individual filing companies to quickly increase rates during the intra-tariff period when significant declines are experienced.

III. THE COMMISSION SHOULD AVOID ANY RULE CHANGES THAT WOULD UNDULY AFFECT THE ENFORCEABILITY OF VALID ACCESS TARIFFS FOR RATE-OF-RETURN CARRIERS AND THEIR CUSTOMERS.

In the *NPRM*, the Commission presents various proposals for either eliminating or modifying the application of the "deemed lawful" provision that is found in Section 204(a)(3). The Commission notes that the United States Court of Appeals for the D.C. Circuit has identified "the possibility that Section 204(a)(3) deemed lawful status might not apply to a tariff if a carrier took improper action that would conceal potential rate of return violations."[15] This finding of the Court suggests there may be some cases where, depending on the precise actions taken by the LEC charging under tariff, a legal challenge to a tariff's deemed lawful status and a request for a refund may be undertaken. While it may be considered helpful to identify the situations where deemed lawful status would not apply and refunds may be pursued, the Rural Alliance would urge the Commission to avoid any extensive, unnecessary rule changes that are not properly focused on specific carriers that are suspected of engaging in what may be deemed to be improper activity.

The Commission has proposed in the *NPRM* possibly using the "forbearance" process provided for under Section 10 as a means of creating an exception to the application of the "deemed lawful" status that is extended under Section 204(a)(3).[16] It

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[15] *See NPRM* at ¶ 28.

[16] Id. at ¶¶ 29-30.

has also proposed possibly requiring that all Section 61.39 carriers file a certification with their tariff filings, certifying that they are not currently stimulating traffic and that they would not do so during the tariff period.[17] And it has proposed as another alternative that all carriers in filing an access tariff with the Commission pursuant to its rules would make certain "specific representations."[18] As an example, it notes that it could adopt a rule that provides that a carrier filing under Section 61.39 is certifying that its use of historical average schedule settlement data to establish its rates is in fact a reasonable proxy for future costs. Or more broadly, it could establish an ongoing requirement that carriers bring to the Commission's attention all significant operational changes that could materially affect the reasonableness of their rates. [19] The Rural Alliance is strongly concerned because, rather than working in a narrow fashion to prevent over-earning by those carriers that are suspected of or may have engaged in access-stimulation activity, such unwarranted proposals would have a far-reaching impact, generally making it more difficult for all ILECs to rely on tariffs as a means of provisioning and receiving compensation for their access services.

Through various proposals the Commission has suggested that broad exceptions may be created with respect to the "deemed lawful" protection that is set forth in the Act. It also proposes that the adoption of certain new regulations that would have to be met in order for carriers to attach lawful status to access tariff terms or rates. For rural carriers in particular, however, the ability to use access tariffs as a means of collecting access

[17]Id. at ¶ 27.

[18]Id. at ¶ 28.

[19] Ibid.

compensation provides important and essential benefits. Through the use of a tariffs rather than carrier-specific contracts, smaller carriers are able to efficiently notify network users of the terms, conditions and rates that are applicable to their access services. Also importantly, the tariff approach gives appropriate recognition to the simple fact that smaller carriers are not in an equal bargaining position with many of the larger regional or national carriers that utilize their network facilities in providing long distance services. Access tariffs continue to provide an efficient and practical means for rural carriers to provide and bill for their access services. The Rural Alliance urges the Commission to avoid any rule changes that are likely to have a general detrimental effect on the future enforcement of access tariffs.

The Commission in fact recently recognized the importance of tariffed access services in its recent decision in WC Docket No. 06-100 ("*Core Communications Order")* when it denied a petition filed by Core Communications, which requested forbearance from the rate regulation preserved by section 251(g).[20] The Commission noted the distinction between local transport and termination services that are subject to reciprocal compensation under Section 251(b)(5) and interexchange services that are subject to the "access charge regime" and covered by the "carve-out provision" found in Section 251(g).[21] In part, as grounds for denying the filed petition, the Commission concluded that "many LECs depend on access revenues to maintain affordable rates and service quality to consumers, especially in rural areas," and that "[b]ecause the record

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[20] *See In the Matter of the Petition of Core Communications, Inc for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules,* Memorandum Opinion and Order, WC Docket No. 06-100, FCC 07-129 (rel. July 26, 2007).

[21] Id. at ¶¶ 15-16.

suggests that changes to access revenue streams without more comprehensive intercarrier compensation reform may harm consumers, we find that enforcement of rate regulation under section 251(g) remains necessary for the protection of consumers."[22]

For these same reasons, the Commission should proceed with caution in this proceeding and adopt an approach for addressing concerns related to over earnings and access stimulation that is carrier-specific. As the Commission correctly recognized in the *Core Communications Order* the distinction between carrier services that are subject to reciprocal compensation and those that are subject to the access regime, the Rural Alliance argues that an essential component to the access regime is the continued ability to use tariffs as a means of collecting access charges. Any action taken in this case to address the limited instances where over-earning is occurring as a result of access-stimulation activities should be carefully crafted so that it does not adversely affect the enforceability of access tariffs as a whole.

IV. THE COMMISSION'S ASSERTION THAT THE MARGINAL OR INCREMENTAL COSTS OF NETWORK SWITCHING AND TRANSPORT IS LOW OR ZERO IS INCORRECT. FURTHERMORE, ANY FINDINGS REGARDING THE MARGINAL OR INCREMENTAL COSTS OF NETWORK SWITCHING AND TRANSPORT IN THIS PROCEEDING WOULD NOT BE APPLICABLE TO THE PRICING OF TRANSPORT AND TERMINATION FOR PURPOSES OF RECIPROCAL COMPENSATION.

The Commission invites comments on its analysis of cost and demand relationships with regard to the setting of just and reasonable rates for switched access tariffs. The Commission asserts that it is well established that there is a large fixed cost to purchasing a local switch <u>and</u> that the marginal or incremental cost of increasing the capacity of a local switch is low (some contend that it is zero) and certainly less than the

[22] Id. at ¶ 15.

average cost per minute of the local switch.[23] The Commission also asks interested parties to comment on the methodologies and conclusion of the May 1, 2007 declaration of Peter Copeland ("*Qwest Declaration*") that estimates the incremental costs of adding significant amounts of switched access traffic.[24]

A. The assertion that the marginal cost or incremental cost of increasing capacity of a local switch or of transport is low is not generally true.

In this proceeding the Commission has turned to the question of the fundamental nature of switching and transport cost in order to better understand the implications of demand stimulation on cost levels. It is logical to reason that if demand stimulation occurs within the intra-tariff period and does not necessitate a concomitant increase in network cost, there may be a question as to the lawfulness of the rates of a carrier under rate of return regulation. However, the manner in which the Commission frames its assertions relative to the nature of network costs lacks precision such that the assertions are not useful for determining actions to be taken within the current proceeding. Furthermore, and perhaps more importantly, the lack of precision in portraying the nature of network costs renders the discussion of network costs in this proceeding inapplicable to other proceedings.

The use of the term "marginal cost" with respect to switching costs is difficult to interpret given the nature of switching costs. In practice, marginal cost is the additional cost caused by increasing the positive production volume of a service by a single unit, holding constant the production levels of all other products and services offered by a firm. Marginal cost answers the question, "How rapidly does cost change when output

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[23] *See NPRM* at ¶¶ 14-16.

[24] Id. at ¶ 16.

changes?" The difficulty of applying the concept of marginal cost to switching costs is that switching costs are a "lumpy" cost function. This means that a given investment will support a given range of switching demand for the same cost; however, if an increase in demand is experienced that causes the total demand for switching to exceed the capacity of the switch, a new increment of switching capacity will need to added in order to support the demand increase. Therefore, if an increase in demand would necessitate the installation of additional switching capacity, the marginal cost at that particular point of demand at which additional switching capacity is needed would be very great.[25] Thus, the marginal cost of switching would always be greater than the average costs at the point of demand at which additional switching capacity is needed. Conversely, the marginal cost of switching is zero at points in which additional switching capacity is not needed. Therefore, an analysis of the marginal cost of switching is not particularly useful in determining whether tariffed switched access rates are just and reasonable, as the marginal cost varies widely based upon the amount of demand.

The Commission's use of the term "incremental cost" without additional description is also unclear and difficult to interpret. The Commission may be referring to short run incremental costs or to long run incremental costs.[26] The various incremental cost concepts are very different from each other as indicated in the literature.[27] For the

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[25] Because marginal cost is defined as the rate of change in total costs with respect to peak demand changes, the points of discontinuity in the total cost function (where additional quantities of switch equipment are being installed or upgraded in discrete amounts) would represent an infinite marginal cost.

[26] The most common measures of long run incremental cost are total service long run incremental cost ("TSLRIC") and total element long run incremental cost ("TELRIC"). Because the issue at hand is whether access rates are just and reasonable, the Rural Alliance assumes that the Commission is referring to incremental costs for access service.

[27] *See* Joshua S. Gans and Stephen P. King, "Comparing Alternative Approaches to Calculating Long-Run Incremental Cost," Melborne Business School, University of Melborne, (June 1, 2004).

purposes of pricing unbundled network elements and transport and termination, the Commission has adopted the use of Total Element Long Run Incremental Cost ("TELRIC"), which measures the total costs associated with a network element as defined by the Commission, plus a reasonable allocation of forward looking common cost ("TELRIC PLUS").[28] Under the Commission's forward looking TELRIC PLUS standard all inputs are considered variable and the firm is assumed to be producing multiple outputs (in this case the outputs are network elements). It would appear that the incremental costs under consideration in this proceeding are short run incremental costs, as the relevant cost concept should be for a tariff filing period, which is two years. In a period of two years all costs are not variable, as two years is not sufficient time for a company to adjust its capacity for switching and transport to the long run demand level. Therefore, the Rural Alliance believes that any discussion of incremental costs in this proceeding refers to short run incremental costs, and is not relevant to long run incremental cost used by the Commission to price UNEs and transport and termination under the TELRIC PLUS standard.

Notwithstanding these difficulties, the Rural Alliance has historically disputed the argument that there are no traffic sensitive costs associated with the provision of end-office switching. In its comments filed on May 23, 2005 in the Unified Intercarrier Compensation Proceeding, the Rural Alliance disputes the claim that LECs do not incur switching costs on a per-minute basis because vendor contracts establish per-line prices rather than per-minute prices. Per-line prices for switching contain an implicit assumption that each line represents a specific amount of traffic (offered load) to the

[28] *See* 47 C.F.R. § 51.505(a).

switch.[29] The Rural Alliance has not been alone in disputing the "per-line price" argument. In comments filed in the Commission's proceeding on the pricing of UNEs, BellSouth (now part of AT&T) also challenged the assertions that switching costs are not dependent on usage volume; in other words, that switching costs are not traffic sensitive.[30] BellSouth's conclusions regarding the traffic sensitive nature of switching costs are also consistent with a study relied upon by the Nebraska Public Service Commission to establish switching rates within an approved transport and termination agreement. In that study, it was demonstrated that 70 percent of the switching costs are traffic sensitive.[31] BellSouth also noted specifically in its comments that in addition to the processor and matrix of a switch being traffic sensitive, trunk terminations are also traffic sensitive.[32] Therefore, evidence suggests that the marginal or incremental cost of switching and transport is not low or zero, especially over the long run.

B. Methodologies and conclusions in Qwest's May 1, 2007 Declaration are not relevant to the calculation of marginal or total element long run incremental costs.

It appears that the intent of the *Qwest Declaration* is to establish that the increase in cost of switching and transport is not proportional to the increase in demand for

[29] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Rural Alliance, (filed May 23, 2005) at p. 51.

[30] *See In the Matter of Review of the Commission's Rule Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Reply Comments of BellSouth (filed Jan. 30, 2004) at p. 69.

[31] *See in the Matter of the Petition of Great Plains Communications, Inc. for Arbitration to Resolve Issues Relating to an Interconnection Agreement with WWC License, L.L.C.,* Nebraska Public Service Commission Application No. C-2872, Interconnection Agreement Approved as Modified, (*"Great Plains Arbitration Decision")* (Entered Sept. 23, 2003) at ¶ 39.

[32] Ibid.

Farmers and Merchants Mutual Telephone Company.[33] The *Qwest Declaration* does not indicate that the calculation of switching and transport costs it presents complies with either marginal costs principles or some form of incremental cost principles, particularly not with the Commission's TELRIC PLUS standard. However, the Commission uses the term "incremental costs" to characterize the cost calculations presented in the *Qwest Declaration*.[34] The Rural Alliance asserts that the Commission should not assume that the calculations in the *Qwest Declaration* are consistent with the Commission's TELRIC PLUS standard for pricing unbundled elements or transport and termination for purposes of reciprocal compensation. In fact, without a clear explanation of the methodology used to calculate the costs of switching and transport presented in the *Qwest Declaration*, the Rural Alliance believes such cost data is of no value in this proceeding or any other proceeding, as it is necessary to understand how cost data is constructed (short run vs. long run, for example) in order to ensure that the data correctly addresses the issue at hand. Irrespective of the label given to the methodology in the *Qwest Declaration*, the estimation of switching and transport costs contained in the *Qwest Declaration* suffers from several systemic flaws.

Before identifying the flaws in estimation of switching and transport costs contained in the *Qwest Declaration*, the Rural Alliance will present a brief description of the cost information contained in the *Qwest Declaration*. The *Qwest Declaration* methodology identifies three cost components: line-side end office switching; trunk-side end office switching; and tandem transport. The *Qwest Declaration* asserts that for line-

[33] *See Qwest Declaration* at ¶ 6 and ¶ 11.

[34] *See NPRM* at ¶ 16.

side switching costs, an increase in minutes of use ("MOU") will not result in any increase in line-side cost because the line-side switch ports are engineered with sufficient capacity to support any increase in usage.[35] Thus, the assertion is that MOU cost for line-side end office switching is zero. For the calculation of trunk side end-office switching cost, a fully loaded per-trunk investment of $197 is assumed. A MOU cost of $.00072 is derived from the trunk investment amount.[36] For the tandem transport cost the Qwest Declaration asserts that once the carrier shifts to fiber-optic facilities, increased traffic flows will hardly increase costs at all because fiber-optic cable's capacity is not inherently limited, but rather governed by the electronics equipment used to light the fiber.[37]

The most obvious problem with the Qwest Declaration is the over simplification of switch architecture. If an end office switch consisted of only line-side and trunk-side ports it would not be possible for any calls to be completed or packets to be routed. There are indeed additional components comprising switching architectures that are distinct from line-side or trunk-side ports and whose costs are a function of traffic load.[38] Switching components that are not mentioned in the Qwest Declaration include items such as processors, matrices, and tone generators. With regard to the calculation of trunk side end-office switching cost, there is no documentation provided for the assumption of

[35] *See Qwest Declaration* at ¶ 7.

[36] The fully loaded per trunk investment cost of $197 is multiplied by a factor to derive a monthly cost per trunk of $6.48. The monthly cost per trunk is divided by 9000 MOU to result in a MOU cost of $.00072. *See Qwest Declaration* at ¶ 9.

[37] Id. at ¶ 11.

[38] As discussed above, switching costs are a "lumpy" function in that switching capacity is added in discrete increments, which may serve a range of demand levels before the addition of another discrete increment is necessary.

a fully loaded per-trunk investment of $197. Furthermore, it is unclear as to the range of output for which this particular number is valid. It does not appear that the cost inputs for trunk-side ports that were utilized in the Qwest Declaration are representative of the range of demand where all costs are variable (long run demand) and, as such, these inputs would be inconsistent with any TELRIC PLUS cost methodology. It is also not clear as to whether the costs included in the calculation are forward looking, which is another requirement for TELRIC PLUS. With respect to tandem transit cost, it is unclear as to what is meant by the phrase "very few additional costs." Further, the Qwest Declaration attempts to extrapolate the economies of a Regional Bell Operating Company's transport network to that of Farmers and Merchants Mutual Telephone Company. Small RLECs do not have the scale and scope economies of Qwest. Finally, with respect to Qwest's assertions regarding tandem transport costs, under the TELRIC PLUS standard, fiber optic transport facilities would be wholly attributable to the transport element. Therefore, the entire fiber optic facility would be included in the TELRIC PLUS cost.

In summary, the general premise of the Qwest Declaration that an increase in demand is not proportional to an increase in cost may be a reasonable assertion over the short run. However, under a total long run incremental cost standard such as the TELRIC PLUS standard the Commission has adopted, the cost of end-office switching and transport elements that are identified in the Qwest Declaration are not low and are certainly not zero.

C. Any record produced in this proceeding relating to the nature of switching and transport costs is not relevant to the pricing of unbundled network elements or transport and termination specified in subpart F or subpart H of Part 51 of the Commission Rules

As discussed above, the Commission's assertions about the nature of switching and transport costs should not be generalized to other proceedings, and in fact are of limited value in the current proceeding, because the Commission has not adequately defined the term "incremental cost." Given that the issues regarding incremental costs in this proceeding address a tariff filing period of two years, the Rural Alliance submits that the incremental costs discussed in this proceeding are short run incremental costs. Therefore, any findings regarding the nature of network costs reached in this proceeding are not applicable to any future Commission proceedings regarding the costing standards adopted by the Commission for unbundled network elements and reciprocal compensation. To be specific, the Commission narrowly defines the forward looking total long run incremental cost of an element (TELRIC PLUS) as it relates to UNE and transport and termination pricing as:

> "the forward looking cost over the long run of the total quantity of the facilities and functions that that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements"[39] and "a reasonable allocation of forward looking common costs"[40]

In the instant proceeding, Commission invites parties to comment on its analysis of costs and uses the term "incremental costs," but does not specify that incremental costs are to be defined by the TELRIC PLUS standard. Further, the costs identified in the

[39] *See* 47 C.F.R. § 51.505(b).

[40] *See* 47 C.F.R. § 51.505(a)(2).

Qwest Declaration are clearly not consistent with the Commission's TELRIC PLUS standard. Therefore, the Rural Alliance recommends that any findings regarding incremental costs that may be reached in the current proceeding are not relevant to the pricing of UNEs or transport and termination for the purposes of reciprocal compensation, and should not be considered in any future proceedings regarding the pricing of UNEs or transport and termination.

V. CONCLUSION

The Rural Alliance appreciates the opportunity to submit comments in this proceeding. As discussed above, the Rural Alliance urges the Commission to use caution in this proceeding and to adopt an approach for concerns related to over earnings and access stimulation that is carrier-specific. General modification of rules for switched access tariffs may have unintended negative consequences for carriers that have not experienced significant demand increases.

Respectfully submitted,

Paul L. Cooper
Facilitator of the Rural Alliance